



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2003-0014

IN THE MATTER OF:

NORTHWESTERN PUBLIC SERVICE CO.

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

November 27, 2002
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

DOCKET NO.: CWA-08-2003-0014

In the Matter of:)
)
Northwestern Public Service Company) **EXPEDITED CONSENT AGREEMENT**
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Respondent.)

Complainant, United States Environmental Protection Agency, Region VIII, and Respondent, Northwestern Public Service Company, by their undersigned representatives, hereby settle the civil cause of action arising out of violations of the Spill Prevention Control and Countermeasures (SPCC) Plan regulations found during an inspection on September 20, 2001, and agree as follows:

The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.

Respondent owns and/or operates an electric utility transformer repair shop located at 1010 21st Street Southwest, Huron, South Dakota.

Respondent admits its facility is subject to the SPCC regulations.

Respondent agrees to correct the items cited on the attached List of SPCC Violations within thirty (30) days unless an extension for achieving compliance is granted by EPA at its

discretion.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This Agreement contains all terms of the settlement agreed to by the parties.

Respondent consents and agrees to the assessment of a civil penalty of \$450.00, which shall be paid by sending, via certified mail, a cashier's or certified check for that amount, payable to "Oil Spill Liability Trust Fund" along with a signed copy of this Agreement, to:

Jane Nakad
Technical Enforcement Program (8ENF-T)
USEPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the corrective measures to obtain compliance as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

The undersigned representative of Respondent certifies that he/she is fully authorized to

enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VIII,
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By : **SIGNED**
Connally Mears, Director
Technical Enforcement Program

Northwestern Public Service Company, Respondent.

By: **SIGNED** Name: **Curt Pohl**
Title: **VP SD/NE OPERATIONS**

List of SPCC Violations

SPCC Plan [40 C.F.R. § 112.3]:

Failure to prepare and implement a facility SPCC Plan in accordance with 40 C.F.R. § 112.7.

The Transformer Repair Shop's SPCC Plan was found to be deficient in the following areas:

No discussion of fail-safe engineering for tanks in violation of 40 C.F.R. § 112.7(e)(2)(viii).

Does not address corrosion protection for buried piping in violation of 40 C.F.R. § 112.7(e)(3)(i).

Lacks procedures for capping/blank-flanging out-of-service piping in violation of 40 C.F.R. § 112.7(e)(3)(ii).

Does not address pipe support design in violation of 40 C.F.R. § 112.7(e)(3)(iii).

No procedures for inspection of above ground valves and piping in violation of 40 C.F.R. § 112.7(e)(3)(iv).

Fails to address whether DOT procedures are followed in loading/unloading operations in violation of 40 C.F.R. § 112.7(e)(4)(i).

Does not address adequate secondary containment for loading/unloading areas in violation of 40 C.F.R. § 112.7(c) and (e)(4)(ii).

Lacks discussion of warning/barrier systems to prevent premature vehicular departure in violation of 40 C.F.R. § 112.7(e)(4)(iii).

Lacks procedures for examination of bottom drains of vehicles in violation of 40 C.F.R. § 112.7(e)(4)(iv).

Lacks written procedures for inspections and for maintaining inspection records for three years in violation of 40 C.F.R. § 112.7(e)(8).

Inadequate discussion of facility fencing in violation of 40 C.F.R. § 112.7(e)(9)(i).

Lacks procedures for locking the tank master flow and drain valves in the closed position in violation of 40 C.F.R. § 112.7(e)(9)(ii).

Lacks procedures for locking pump starter controls in the off position in violation of 40 C.F.R. § 112.7(e)(9)(iii).

Lacks procedures for draining and blank-flanging pipelines when not in use in violation of 40 C.F.R. § 112.7(e)(9)(iv).

Adequate facility lighting is not addressed in violation of 40 C.F.R. § 112.7(e)(9)(v).

Lacks schedule and description of spill prevention procedures for personnel in violation of 40 C.F.R. § 112.7(e)(10).

Fails to designate an individual responsible for spill prevention in violation of 40 C.F.R. § 112.7(e)(10)(ii).

SPCC technical implementation measures were deficient in the following areas:

Inspections were not conducted in accordance with written inspection procedures as required by 40 C.F.R. § 112.7(e)(8).

No warning signs, barrier or other system to prevent premature departure of tank trucks prior to disconnect of transfer hoses 40 C.F.R. § 112.7(e)(4)(iii).

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **NORTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO.: CWA-08-2003-0014** was filed with the Regional Hearing Clerk on November 27, 2002.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michael Risner Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Curt Pohl
VP SD/NE Operations
Northwestern Public Service Co.
600 Market Street, NW
Huron, SD 57350

and

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

November 27, 2002

SIGNED _____
Tina Artemis
Regional Hearing Clerk

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON NOVEMBER 27, 2002.

